

COUNTY TAX AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Wayne A. Harper

Senate Sponsor: _____

LONG TITLE

General Description:

This bill authorizes a county of the first class, under certain circumstances, to levy an energy sales and use tax, and authorizes a county of the first class, under certain circumstances, to levy a telecommunications license tax.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ authorizes a county of the first class, under certain circumstances, to levy an energy sales and use tax;
- ▶ authorizes a county of the first class, under certain circumstances, to levy a telecommunications license tax;
- ▶ amends related tax provisions; and
- ▶ makes technical corrections.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

11-26-1, as last amended by Laws of Utah 2003, Chapter 253



- 28 **59-1-302**, as last amended by Laws of Utah 2009, Chapter 212
- 29 **59-1-401**, as last amended by Laws of Utah 2009, Chapters 31, 203, 212, and 336
- 30 **59-1-1402**, as enacted by Laws of Utah 2009, Chapter 212
- 31 **59-12-107**, as last amended by Laws of Utah 2009, Chapter 212
- 32 **59-12-108**, as last amended by Laws of Utah 2008, Chapters 286, 382, and 384
- 33 **59-12-128**, as last amended by Laws of Utah 2009, Chapter 212
- 34 **72-7-102**, as last amended by Laws of Utah 2008, Chapter 382
- 35 **72-7-108**, as last amended by Laws of Utah 2008, Chapter 382

36 ENACTS:

- 37 **17-50-601**, Utah Code Annotated 1953
- 38 **17-50-602**, Utah Code Annotated 1953
- 39 **17-50-603**, Utah Code Annotated 1953
- 40 **17-50-604**, Utah Code Annotated 1953
- 41 **17-50-605**, Utah Code Annotated 1953
- 42 **17-50-606**, Utah Code Annotated 1953
- 43 **17-50-607**, Utah Code Annotated 1953
- 44 **17-50-608**, Utah Code Annotated 1953
- 45 **17-50-609**, Utah Code Annotated 1953
- 46 **17-50-610**, Utah Code Annotated 1953
- 47 **17-50-701**, Utah Code Annotated 1953
- 48 **17-50-702**, Utah Code Annotated 1953
- 49 **17-50-703**, Utah Code Annotated 1953
- 50 **17-50-704**, Utah Code Annotated 1953
- 51 **17-50-705**, Utah Code Annotated 1953
- 52 **17-50-706**, Utah Code Annotated 1953
- 53 **17-50-707**, Utah Code Annotated 1953
- 54 **17-50-708**, Utah Code Annotated 1953
- 55 **17-50-709**, Utah Code Annotated 1953
- 56 **17-50-710**, Utah Code Annotated 1953

58 *Be it enacted by the Legislature of the state of Utah:*

59 Section 1. Section **11-26-1** is amended to read:

60 **11-26-1. Definitions -- Ceiling on local charges based on gross revenues of public**
61 **service provider.**

62 (1) As used in this chapter:

63 (a) "Local charge" means one or more of the following charges paid by a public service
64 provider to a county or municipality:

65 (i) a tax;

66 (ii) a license;

67 (iii) a fee;

68 (iv) a license fee;

69 (v) a license tax; or

70 (vi) a charge similar to Subsections (1)(a)(i) through (v).

71 (b) "Municipality" means:

72 (i) a city; or

73 (ii) a town.

74 (c) "Public service provider" means [~~a person engaged in the business of supplying~~
75 ~~taxable~~] an energy supplier as defined in [~~Section~~] Sections 10-1-303 and 17-50-603.

76 (2) A county or a municipality may not impose upon, charge, or collect from a public
77 service provider local charges:

78 (a) imposed on the basis of the gross revenues of the public service provider;

79 (b) derived from sales, use, or both sales and use of the service within the county or
80 municipality; and

81 (c) in a total amount that is greater than 6% of gross revenues.

82 (3) The determination of gross revenues under this section may not include:

83 (a) the sale of gas or electricity as special fuel for motor vehicles; or

84 (b) a local charge.

85 (4) This section may not be construed to:

86 (a) affect or limit the power of counties or municipalities to impose sales and use taxes
87 under:

88 (i) Title 59, Chapter 12, Sales and Use Tax Act; [~~or~~]

89 (ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

90 (iii) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or
 91 (b) grant any county or municipality the power to impose a local charge not otherwise
 92 provided for by law.

93 (5) This section takes precedence over any conflicting provision of law.

94 Section 2. Section **17-50-601** is enacted to read:

95 **Part 6. County Energy Sales and Use Tax Act**

96 **17-50-601. Title.**

97 This part is known as the "County Energy Sales and Use Tax Act."

98 Section 3. Section **17-50-602** is enacted to read:

99 **17-50-602. Purpose and intent.**

100 The Legislature finds that:

101 (1) the energy industry has previously been highly regulated and monopolistic;

102 (2) counties have historically raised general fund revenues by collecting franchise and
 103 business license revenues from the energy industry;

104 (3) substantial restructuring of the energy industry has created an opportunity for
 105 increased competition within the energy industry;

106 (4) the restructuring of the energy industry has diminished the effectiveness and
 107 fairness of the revenues collected by counties;

108 (5) to provide for a stable revenue source for counties and to create a more competitive
 109 environment for the energy industry, it is necessary to enact taxing authority for counties that
 110 accomplishes those goals; and

111 (6) this part does not alter or affect a county's authority to grant or regulate franchises,
 112 or to control county streets, highways, or other property.

113 Section 4. Section **17-50-603** is enacted to read:

114 **17-50-603. Definitions.**

115 As used in this part:

116 (1) "Commission" means the State Tax Commission.

117 (2) "Contractual franchise fee" means:

118 (a) a fee:

119 (i) provided for in a franchise agreement; and

120 (ii) that is consideration for the franchise agreement; or

- 121 (b) (i) a fee similar to Subsection (2)(a); or
122 (ii) any combination of Subsections (2)(a) and (b).
123 (3) "County" means a county of the first class.
124 (4) (a) "Delivered value" means the fair market value of the taxable energy delivered
125 for sale or use in the unincorporated county and includes:
126 (i) the value of the energy itself; and
127 (ii) any transportation, freight, customer demand charges, service charges, or other
128 costs typically incurred in providing taxable energy in usable form to each class of customer in
129 the county.
130 (b) "Delivered value" does not include the amount of a tax paid under:
131 (i) Title 59, Chapter 12, Part 1, Tax Collection;
132 (ii) Title 59, Chapter 12, Part 2, Local Sales and Use Tax Act; or
133 (iii) this part.
134 (5) "De minimis amount" means an amount of taxable energy that does not exceed the
135 greater of:
136 (a) 5% of the energy supplier's estimated total Utah gross receipts from sales of
137 property or services; or
138 (b) \$10,000.
139 (6) "Energy supplier" means a person supplying taxable energy, except that the
140 commission may by rule exclude from this definition a person supplying a de minimis amount
141 of taxable energy.
142 (7) "Franchise agreement" means:
143 (a) a franchise; or
144 (b) an ordinance, a contract, or an agreement granting a franchise.
145 (8) "Franchise tax" means:
146 (a) a franchise tax;
147 (b) a tax similar to a franchise tax; or
148 (c) any combination of Subsections (8)(a) and (b).
149 (9) "Person" is as defined in Section 59-12-102.
150 (10) "Taxable energy" means gas and electricity.
151 Section 5. Section **17-50-604** is enacted to read:

152 17-50-604. County may levy tax -- Rate -- Imposition or repeal of tax -- Tax rate
153 change -- Effective date -- Notice requirements -- Exemptions.

154 (1) (a) Except as provided in Subsections (3), (4), and (5), a county, beginning July 1,
155 2010, may levy a county energy sales and use tax on the sale or use of taxable energy within the
156 unincorporated county:

157 (i) by ordinance as provided in Section 17-50-605; and

158 (ii) of up to 6% of the delivered value of the taxable energy.

159 (b) A county energy sales and use tax imposed under this part may be in addition to any
160 sales and use tax imposed by the county under Title 59, Chapter 12, Sales and Use Tax Act.

161 (2) (a) For purposes of this Subsection (2):

162 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2,
163 County Annexation.

164 (ii) "Annexing area" means an area that is annexed into a county.

165 (b) (i) If, on or after July 1, 2010, a county enacts or repeals a tax or changes the rate of
166 a tax under this part, the enactment, repeal, or change shall take effect:

167 (A) on the first day of a calendar quarter; and

168 (B) after a 90-day period beginning on the date the commission receives notice meeting
169 the requirements of Subsection (2)(b)(ii) from the county.

170 (ii) The notice described in Subsection (2)(b)(i)(B) shall state:

171 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;

172 (B) the statutory authority for the tax described in Subsection (2)(b)(ii)(A);

173 (C) the effective date of the tax described in Subsection (2)(b)(ii)(A); and

174 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
175 (2)(b)(ii)(A), the new rate of the tax.

176 (c) (i) If, for an annexation that occurs on or after July 1, 2010, the annexation will
177 result in a change in the rate of a tax under this part for an annexing area, the change shall take
178 effect:

179 (A) on the first day of a calendar quarter; and

180 (B) after a 90-day period beginning on the date the commission receives notice meeting
181 the requirements of Subsection (2)(c)(ii) from the annexing county as defined in Section

182 17-2-202.

183 (ii) The notice described in Subsection (2)(c)(i)(B) shall state:
184 (A) that the annexation described in Subsection (2)(c)(i) will result in a change in the
185 rate of a tax under this part for the annexing area;
186 (B) the statutory authority for the tax described in Subsection (2)(c)(ii)(A);
187 (C) the effective date of the tax described in Subsection (2)(c)(ii)(A); and
188 (D) the new rate of the tax described in Subsection (2)(c)(ii)(A).
189 (3) A sale or use of electricity within the unincorporated county is exempt from the tax
190 authorized by this section if the sale or use is:
191 (a) made under a tariff adopted by the Public Service Commission of Utah only for
192 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
193 source, as designated in the tariff by the Public Service Commission of Utah; and
194 (b) for an amount of electricity that is:
195 (i) unrelated to the amount of electricity used by the person purchasing the electricity
196 under the tariff described in Subsection (3)(a); and
197 (ii) equivalent to the number of kilowatt-hours specified in the tariff described in
198 Subsection (3)(a) that may be purchased under the tariff described in Subsection (3)(a).
199 (4) A county may not levy a county energy sales and use tax within any portion of the
200 county that is within a project area described in a project area plan adopted by the military
201 installation development authority under Title 63H, Chapter 1, Military Installation
202 Development Authority Act.
203 (5) A county may not levy a county energy sales and use tax under this part if:
204 (a) the county has created a service area under Title 17B, Chapter 2a, Part 9, Service
205 Area Act, including a service area for:
206 (i) law enforcement services;
207 (ii) fire protection services;
208 (iii) paramedic services; or
209 (iv) emergency services; and
210 (b) a service area described in Subsection (5)(a) charges a fee under Section
211 17B-1-643.
212 (6) (a) Subject to the requirements of Subsection (6)(b), a franchise agreement between
213 a county and an energy supplier may contain a provision that:

214 (i) requires the energy supplier by agreement to pay a contractual franchise fee that is
215 otherwise prohibited under this part; and

216 (ii) imposes the contractual franchise fee on or after the day on which this part is:
217 (A) repealed, invalidated, or the maximum allowable rate provided in Section
218 17-50-605 is reduced; and

219 (B) not superseded by a law imposing a substantially equivalent tax.

220 (b) A county may not charge a contractual franchise fee under the provisions permitted
221 by Subsection (6)(a) unless the county charges an equal contractual franchise fee or a tax on all
222 energy suppliers.

223 Section 6. Section **17-50-605** is enacted to read:

224 **17-50-605. County energy sales and use tax ordinance provisions.**

225 Each county energy sales and use tax ordinance under Subsection 17-50-604(1) shall
226 include:

227 (1) a provision imposing a tax on every sale or use of taxable energy made within the
228 unincorporated county at a rate determined by the county that is up to 6% of the delivered value
229 of the taxable energy;

230 (2) provisions substantially the same as those required by Title 59, Chapter 12, Part 1,
231 Tax Collection, as they relate to sales and use tax, except that:

232 (a) the tax shall be calculated on the delivered value of the taxable energy to the
233 consumer;

234 (b) an exemption is not allowed from a tax imposed under this part for the sale or use
235 of taxable energy that is exempt from the state sales and use tax under Title 59, Chapter 12,
236 Part 1, Tax Collection, except that the county shall include in its ordinance an exemption for:

237 (i) the sales and use of aviation fuel, motor fuel, or special fuel subject to taxation
238 under Title 59, Chapter 13, Motor and Special Fuel Tax Act;

239 (ii) the sales and use of taxable energy that the county is prohibited from taxing under
240 federal law or the Constitution of the United States or the Utah Constitution;

241 (iii) the sales and use of taxable energy purchased or stored in the state for resale;
242 (iv) the sales or use of taxable energy to a person if the primary use is for use in
243 compounding or producing taxable energy or a fuel subject to taxation under Title 59, Chapter
244 13, Motor and Special Fuel Tax Act;

245 (v) taxable energy brought into the state by a nonresident for the nonresident's own
246 personal use or enjoyment while within the state, except taxable energy purchased for use in
247 the state by a nonresident living or working in the state at the time of purchase;

248 (vi) the sales or use of taxable energy for any purpose other than use as a fuel or
249 energy; and

250 (vii) the sale of taxable energy for use outside a county imposing a county energy sales
251 and use tax;

252 (c) the ordinance may provide for an exemption from the county energy sales and use
253 tax under this part for customers who, as of July 1, 2010, were being supplied electrical energy
254 by a supplier other than the county if:

255 (i) the county is a generator of electrical energy for customers within its unincorporated
256 areas; and

257 (ii) the county is unable to generate electrical energy for the customer;

258 (d) the name of the county as the taxing agency shall be substituted for that of the state
259 when necessary for purposes of this part; and

260 (e) an additional license to collect the tax is not required if one has been issued under
261 Section 59-12-106;

262 (3) a provision that, on or before the effective date of the ordinance, the county shall
263 enter into a contract with the commission to have the commission perform all functions related
264 to the administration or operation of the ordinance, except that a county may collect the county
265 energy sales and use tax directly as provided in Subsection 17-50-607(3);

266 (4) a provision that:

267 (a) except as provided under Subsection (4)(b), the sale, storage, use, or other
268 consumption of taxable energy is exempt from the tax due under the ordinance if the delivered
269 value of the taxable energy has been subject to a county energy sales or use tax under an
270 ordinance enacted in accordance with this part by another county in this state; and

271 (b) the county shall be paid the difference between the tax paid to another county as
272 described in this section and the tax that would otherwise be due under the ordinance if the tax
273 due under the ordinance exceeds the tax paid to another county; and

274 (5) a provision providing that the ordinance adopts by reference any amendments to the
275 provisions of Title 59, Chapter 12, Part 1, Tax Collection, that relate to levying or collecting a

276 county energy sales and use tax.

277 Section 7. Section **17-50-606** is enacted to read:

278 **17-50-606. Rules for delivered value and point of sale.**

279 (1) The delivered value of taxable energy under this part shall be established pursuant
280 to rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative
281 Rulemaking Act.

282 (2) The rules made by the commission under Subsection (1):

283 (a) shall provide that an arm's length sales price for taxable energy sold or used by a
284 taxpayer in the county is the delivered value, unless the sales price does not include some
285 portion of the taxable energy or component of delivered value;

286 (b) shall establish one or more default methods for determining the delivered value for
287 each customer class one time per calendar year on or before January 31 for taxable energy
288 when the commission determines that the sales price does not accurately reflect delivered
289 value; and

290 (c) shall provide that for purposes of determining the point of sale or use of taxable
291 energy, the location of the meter is normally the point of sale or use unless the taxpayer
292 demonstrates that the use is not in an unincorporated area of a county imposing the county
293 energy sales and use tax.

294 (3) In establishing a default method under Subsection (2)(b), the commission:

295 (a) shall take into account quantity discounts and other reductions or increases in value
296 that are generally available in the marketplace for various grades or types of property and
297 classes of services; and

298 (b) may consider:

299 (i) generally applicable tariffs for various classes of utility services approved by the
300 Public Service Commission or other governmental entity;

301 (ii) posted prices;

302 (iii) spot-market prices;

303 (iv) trade publications;

304 (v) market data; and

305 (vi) other information and data prescribed by the commission.

306 Section 8. Section **17-50-607** is enacted to read:

307 17-50-607. Administration, collection, and enforcement of taxes by commission --
308 Distribution of revenues -- Charge for services -- Collection of taxes by county.

309 (1) Except as provided in Subsection (3), the commission shall administer, collect, and
310 enforce the county energy sales and use tax from energy suppliers according to the procedures
311 established in:

312 (a) Title 59, Chapter 1, General Taxation Policies; and

313 (b) Title 59, Chapter 12, Part 1, Tax Collection, except for Sections 59-12-107.1 and
314 59-12-123.

315 (2) (a) Except as provided in Subsections 17-50-604(6) and 17-50-605(5), the
316 commission shall pay a county the difference between:

317 (i) the entire amount collected by the commission from the county energy sales and use
318 tax authorized by this part based on:

319 (A) the point of sale of the taxable energy if a taxable sale occurs in an unincorporated
320 area of a county that imposes a county energy sales and use tax as provided in this part; or

321 (B) the point of use of the taxable energy if the use occurs in an unincorporated area of
322 a county that imposes a county energy sales and use tax as provided in this part; and

323 (ii) the administration fee charged in accordance with Subsection (2)(c).

324 (b) In accordance with Subsection (2)(a), the commission shall transfer to the county
325 monthly by electronic transfer the revenues generated by the county energy sales and use tax
326 levied by the county and collected by the commission.

327 (c) (i) The commission shall charge a county imposing a county energy sales and use
328 tax a fee for administering the tax at the percentage provided in Section 59-12-206, except that
329 the commission may not charge a fee for taxes collected by a county under Subsection (3).

330 (ii) The fee charged under Subsection (2)(c)(i) shall be:

331 (A) deposited in the Sales and Use Tax Administrative Fees Account; and

332 (B) used for sales tax administration as provided in Subsection 59-12-206(2).

333 (3) An energy supplier shall pay the county energy sales and use tax revenues it
334 collects from its customers under this part directly to each county in which the energy supplier
335 has sales of taxable energy if:

336 (a) the county is the energy supplier; or

337 (b) (i) the energy supplier estimates that the county energy sales and use tax collected

338 annually by the energy supplier from its Utah customers equals \$1,000,000 or more; and

339 (ii) the energy supplier collects the tax imposed under this part.

340 (4) An energy supplier paying a tax under this part directly to a county may retain the
341 percentage of the tax authorized under Subsection 59-12-108(2) for the energy supplier's costs
342 of collecting and remitting the tax.

343 (5) An energy supplier paying the tax under this part directly to a county shall file an
344 information return with the commission, at least annually, on a form prescribed by the
345 commission.

346 Section 9. Section **17-50-608** is enacted to read:

347 **17-50-608. Report of tax collections -- Allocation when location of taxpayer**
348 **cannot be accurately determined.**

349 (1) All county energy sales and use taxes collected under this part shall be reported to
350 the commission on forms that accurately identify the county where the taxpayer is located.

351 (2) The commission shall make rules, in accordance with Title 63G, Chapter 3, Utah
352 Administrative Rulemaking Act, to proportionally distribute all taxes collected if the county
353 where the taxpayer is located cannot be accurately determined.

354 Section 10. Section **17-50-609** is enacted to read:

355 **17-50-609. Limitation of other energy taxes or fees.**

356 (1) Subject to the other provisions of this section, a county may not levy or collect an
357 energy tax or fee on a person except for an energy tax or fee imposed by the county:

358 (a) on an energy supplier to recover the management costs of the county caused by the
359 activities of the energy supplier in the right-of-way of a county, if the energy tax or fee:

360 (i) is imposed in accordance with Section 72-7-102; and

361 (ii) is not related to:

362 (A) a county's loss of use of a highway as a result of the activities of the energy
363 supplier in a right-of-way; or

364 (B) increased deterioration of a highway as a result of the activities of the energy
365 supplier in a right-of-way; or

366 (b) on a person that:

367 (i) is not subject to a county energy sales and use tax under this part; and

368 (ii) locates an energy facility in the county, including:

369 (A) an electrical transmission line;

370 (B) an electrical substation;

371 (C) a natural gas pipeline; or

372 (D) a natural gas regulation station.

373 (2) Subsection (1)(a) may not be interpreted as exempting an energy supplier from
374 complying with any ordinance:

375 (a) related to excavation, construction, or installation of an energy facility described in
376 Subsection (1)(b)(ii); and

377 (b) that addresses the safety and quality standards of the county for excavation,
378 construction, or installation.

379 (3) An energy tax or fee imposed under Subsection (1)(b) shall be imposed:

380 (a) by ordinance; and

381 (b) on a competitively neutral basis.

382 Section 11. Section **17-50-610** is enacted to read:

383 **17-50-610. Metalliferous mining -- Exemption from county energy sales and use**
384 **tax.**

385 A county may not levy a county energy sales and use tax on energy sold or consumed in
386 metalliferous mining activities.

387 Section 12. Section **17-50-701** is enacted to read:

Part 7. County Telecommunications License Tax Act

389 **17-50-701. Title.**

390 This part is known as the "County Telecommunications License Tax Act."

391 Section 13. Section **17-50-702** is enacted to read:

392 **17-50-702. Definitions.**

393 As used in this part:

394 (1) "Commission" means the State Tax Commission.

395 (2) "Contractual franchise fee" means:

396 (a) a fee:

397 (i) provided for in a franchise agreement; and

398 (ii) that is consideration for the franchise agreement; or

399 (b) (i) a fee similar to Subsection (2)(a); or

400 (ii) any combination of Subsections (2)(a) and (b).

401 (3) "County" means a county of the first class.

402 (4) (a) Subject to Subsections (4)(b) and (c), "customer" means the person who is
403 obligated under a contract with a telecommunications provider to pay for telecommunications
404 service received under the contract.

405 (b) For purposes of this section and Section 17-50-707, "customer" means:

406 (i) the person who is obligated under a contract with a telecommunications provider to
407 pay for telecommunications service received under the contract; or

408 (ii) if the end user is not the person described in Subsection (4)(b)(i), the end user of
409 telecommunications service.

410 (c) "Customer" does not include a reseller:

411 (i) of telecommunications service; or

412 (ii) for mobile telecommunications service, of a serving carrier under an agreement to
413 serve the customer outside the telecommunications provider's licensed service area.

414 (5) (a) "End user" means the person who uses a telecommunications service.

415 (b) For purposes of telecommunications service provided to a person who is not an
416 individual, "end user" means the individual who uses the telecommunications service on behalf
417 of the person who is provided the telecommunications service.

418 (6) "Franchise agreement" means:

419 (a) a franchise; or

420 (b) an ordinance, a contract, or an agreement granting a franchise.

421 (7) "Franchise tax" means:

422 (a) a franchise tax;

423 (b) a tax similar to a franchise tax; or

424 (c) any combination of Subsections (7)(a) and (b).

425 (8) (a) "Gross receipts from telecommunications service" means the revenue that a
426 telecommunications provider receives for telecommunications service rendered except for
427 amounts collected or paid as:

428 (i) a tax, fee, or charge:

429 (A) imposed by a governmental entity;

430 (B) separately identified as a tax, fee, or charge in the transaction with the customer for

431 the telecommunications service; and
432 (C) imposed only on a telecommunications provider;
433 (ii) sales and use taxes collected by the telecommunications provider from a customer
434 under Title 59, Chapter 12, Sales and Use Tax Act; or
435 (iii) interest, a fee, or a charge that is charged by a telecommunications provider on a
436 customer for failure to pay for telecommunications service when payment is due.
437 (b) "Gross receipts from telecommunications service" includes a charge necessary to
438 complete a sale of a telecommunications service.
439 (9) "Mobile telecommunications service" is as defined in the Mobile
440 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
441 (10) "Place of primary use":
442 (a) for telecommunications service other than mobile telecommunications service,
443 means the street address representative of where the customer's use of the telecommunications
444 service primarily occurs, which shall be:
445 (i) the residential street address of the customer; or
446 (ii) the primary business street address of the customer; or
447 (b) for mobile telecommunications service, is as defined in the Mobile
448 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
449 (11) Notwithstanding where a call is billed or paid, "service address" means:
450 (a) if the location described in this Subsection (11)(a) is known, the location of the
451 telecommunications equipment:
452 (i) to which a call is charged; and
453 (ii) from which the call originates or terminates;
454 (b) if the location described in Subsection (11)(a) is not known but the location
455 described in this Subsection (11)(b) is known, the location of the origination point of the signal
456 of the telecommunications service first identified by:
457 (i) the telecommunications system of the telecommunications provider; or
458 (ii) if the system used to transport the signal is not a system of the telecommunications
459 provider, information received by the telecommunications provider from its service provider;
460 or
461 (c) if the locations described in Subsection (11)(a) or (b) are not known, the location of

462 a customer's place of primary use.

463 (12) (a) Subject to Subsections (12)(b) and (c), "telecommunications provider" means a
464 person that:

465 (i) owns, controls, operates, or manages a telecommunications service; or

466 (ii) engages in an activity described in Subsection (12)(a)(i) for the shared use with or
467 resale to any person of the telecommunications service.

468 (b) A person described in Subsection (12)(a) is a telecommunications provider whether
469 or not the Public Service Commission of Utah regulates:

470 (i) that person; or

471 (ii) the telecommunications service that the person owns, controls, operates, or
472 manages.

473 (c) "Telecommunications provider" does not include an aggregator as defined in
474 Section 54-8b-2.

475 (13) "Telecommunications service" means:

476 (a) telecommunications service, as defined in Section 59-12-102, other than mobile
477 telecommunications service, that originates and terminates within the boundaries of this state;

478 (b) mobile telecommunications service, as defined in Section 59-12-102:

479 (i) that originates and terminates within the boundaries of one state; and

480 (ii) only to the extent permitted by the Mobile Telecommunications Sourcing Act, 4
481 U.S.C. Sec. 116 et seq.; or

482 (c) an ancillary service as defined in Section 59-12-102.

483 (14) (a) Except as provided in Subsection (14)(b), "telecommunications tax or fee"
484 means any of the following imposed by a county on a telecommunications provider:

485 (i) a tax;

486 (ii) a license;

487 (iii) a fee;

488 (iv) a license fee;

489 (v) a license tax;

490 (vi) a franchise fee; or

491 (vii) a charge similar to a tax, license, or fee described in Subsections (14)(a)(i)
492 through (vi).

493 (b) "Telecommunications tax or fee" does not include:
494 (i) the county telecommunications license tax authorized by this part; or
495 (ii) a tax, fee, or charge, including a tax imposed under Title 59, Revenue and
496 Taxation, that is imposed:

497 (A) on telecommunications providers; and
498 (B) on persons who are not telecommunications providers.

499 Section 14. Section **17-50-703** is enacted to read:

500 **17-50-703. County may levy county telecommunications license tax -- Recovery**
501 **from customers -- Enactment, repeal, or change in rate of tax -- Annexation.**

502 (1) (a) Subject to the provisions of this section and except as provided in Subsection
503 (1)(b), beginning July 1, 2010, a county may levy on and provide that there is collected from a
504 telecommunications provider a county telecommunications license tax on the
505 telecommunications provider's gross receipts from telecommunications service that are
506 attributed to the unincorporated county in accordance with Section 17-50-707.

507 (b) A county may not levy a county energy sales and use tax under this part if:

508 (i) the county has created a service area under Title 17B, Chapter 2a, Part 9, Service
509 Area Act, including a service area for:

510 (A) law enforcement services;

511 (B) fire protection services;

512 (C) paramedic services; or

513 (D) emergency services; and

514 (ii) a service area described in Subsection (1)(b)(i) charges a fee under Section
515 17B-1-643.

516 (c) To levy and provide for the collection of a county telecommunications license tax
517 under this part, the county shall adopt an ordinance that complies with the requirements of
518 Section 17-50-704.

519 (d) Beginning on July 1, 2010, a county telecommunications license tax imposed under
520 this part shall be at a rate of up to 3.5% of the telecommunications provider's gross receipts
521 from telecommunications service that are attributed to the county in accordance with Section
522 17-50-707.

523 (2) A telecommunications provider may recover the amounts paid in county

524 telecommunications license taxes from the customers of the telecommunications provider
525 within the county imposing the unincorporated county telecommunications license tax through
526 a charge that is separately identified in the statement of the transaction with the customer as the
527 recovery of a tax.

528 (3) (a) For purposes of this Subsection (3):

529 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2, Part 2,
530 County Annexation.

531 (ii) "Annexing area" means an area that is annexed into a county.

532 (b) (i) If, on or after July 1, 2010, a county enacts or repeals a tax or changes the rate of
533 the tax under this part, the enactment, repeal, or change shall take effect:

534 (A) on the first day of a calendar quarter; and

535 (B) after a 90-day period beginning on the date the commission receives notice meeting
536 the requirements of Subsection (3)(b)(ii) from the county.

537 (ii) The notice described in Subsection (3)(b)(i)(B) shall state:

538 (A) that the county will enact or repeal a tax under this part or change the rate of the
539 tax;

540 (B) the statutory authority for the tax described in Subsection (3)(b)(ii)(A);

541 (C) the effective date of the tax described in Subsection (3)(b)(ii)(A); and

542 (D) if the county enacts the county telecommunications license tax or changes the rate
543 of the tax, the new rate of the tax.

544 (c) (i) If, for an annexation that occurs on or after July 1, 2010, the annexation will
545 result in a change in the rate of the tax under this part for an annexing area, the change shall
546 take effect:

547 (A) on the first day of a calendar quarter; and

548 (B) after a 90-day period beginning on the date the commission receives notice meeting
549 the requirements of Subsection (3)(c)(ii) from the county that annexes the annexing area.

550 (ii) The notice described in Subsection (3)(c)(i)(B) shall state:

551 (A) that the annexation described in Subsection (3)(c)(i) will result in a change in the
552 rate of a tax under this part for the annexing area;

553 (B) the statutory authority for the tax described in Subsection (3)(c)(ii)(A);

554 (C) the effective date of the tax described in Subsection (3)(c)(ii)(A); and

555 (D) the new rate of the tax described in Subsection (3)(c)(ii)(A).

556 (4) A county may not levy or collect a county telecommunications license tax for
557 telecommunications service provided within any portion of the county that is within a project
558 area described in a project area plan adopted by the military installation development authority
559 under Title 63H, Chapter 1, Military Installation Development Authority Act.

560 Section 15. Section **17-50-704** is enacted to read:

561 **17-50-704. County telecommunications license tax ordinance provisions.**

562 An ordinance required by Section 17-50-703 shall include a provision that:

563 (1) levies an unincorporated county telecommunications license tax:

564 (a) on the gross receipts from telecommunications service attributed to the county in
565 accordance with Section 17-50-707;

566 (b) at a rate:

567 (i) not to exceed the rate specified in Subsection 17-50-703(1)(c); and

568 (ii) subject to the requirements of Section 17-50-707; and

569 (c) beginning on a date:

570 (i) on or after July 1, 2010; and

571 (ii) subject to the requirements of Section 17-50-703;

572 (2) on or before the effective date of the ordinance, the county shall enter into the
573 uniform interlocal agreement with the commission described in Section 17-50-705 under which
574 the commission collects, enforces, and administers the county telecommunications license tax;

575 (3) exempts a county from the limitation on the rate that may be imposed under
576 Subsection (1)(b)(i) if the exemption from the limitation on the rate that may be imposed under
577 Subsection (1)(b)(i) is approved by a majority vote of the voters in the unincorporated county
578 that vote in:

579 (a) a county general election;

580 (b) a regular general election; or

581 (c) a local special election;

582 (4) incorporates the provisions of Section 17-50-708; and

583 (5) provides a credit against the tax in the amount of a contractual franchise fee paid if:

584 (a) a telecommunications provider pays a contractual franchise fee to a county pursuant
585 to a franchise agreement in effect on July 1, 2010;

586 (b) the contractual franchise fee is passed through by the energy supplier to a taxpayer
587 as a separately itemized charge; and

588 (c) the energy supplier has accepted the franchise.

589 Section 16. Section **17-50-705** is enacted to read:

590 **17-50-705. Collection of taxes by commission -- Uniform interlocal agreement --**
591 **Rulemaking authority -- Charge for services.**

592 (1) Subject to the other provisions of this section, the commission shall collect,
593 enforce, and administer any county telecommunications license tax imposed under this part
594 pursuant to:

595 (a) the same procedures used in the administration, collection, and enforcement of the
596 state sales and use tax under:

597 (i) Title 59, Chapter 1, General Taxation Policies; and

598 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

599 (A) except for:

600 (I) Subsection 59-12-103(2)(g);

601 (II) Section 59-12-104;

602 (III) Section 59-12-104.1;

603 (IV) Section 59-12-104.2;

604 (V) Section 59-12-104.3;

605 (VI) Section 59-12-107.1; and

606 (VII) Section 59-12-123; and

607 (B) except that for purposes of Section 59-1-1410, the term "person" may include a
608 customer from whom a county telecommunications license tax is recovered in accordance with
609 Subsection 17-50-703(2); and

610 (b) a uniform interlocal agreement:

611 (i) between:

612 (A) the county that imposes the county telecommunications license tax; and

613 (B) the commission;

614 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

615 (iii) that complies with Subsection (2)(a); and

616 (iv) that is developed by rule in accordance with Subsection (2)(b).

617 (2) (a) The uniform interlocal agreement described in Subsection (1)(b) shall provide
618 that the commission shall:

619 (i) transmit monies collected under this part:

620 (A) monthly; and

621 (B) by electronic funds transfer by the commission to the county;

622 (ii) conduct audits of the county telecommunications license tax;

623 (iii) charge the county for the commission's services under this section in an amount:

624 (A) sufficient to reimburse the commission for the cost to the commission in rendering
625 the services; and

626 (B) that may not exceed an amount equal to 1.5% of the county telecommunications
627 license tax imposed by the ordinance of the county; and

628 (iv) collect, enforce, and administer the county telecommunications license tax
629 authorized under this part pursuant to the same procedures used in the administration,
630 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).

631 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
632 commission shall develop a uniform interlocal agreement that meets the requirements of this
633 section.

634 (3) The administrative fee charged under Subsection (2)(a) shall be:

635 (a) deposited in the Sales and Use Tax Administrative Fees Account; and

636 (b) used for administration of county telecommunications license taxes under this part.

637 Section 17. Section **17-50-706** is enacted to read:

638 **17-50-706. Limitation of other telecommunications taxes or fees.**

639 (1) Subject to the other provisions of this section, a county may not levy or collect a
640 telecommunications tax or fee on a person except for a telecommunications tax or fee imposed
641 by the county:

642 (a) on a telecommunications provider to recover the management costs of the county
643 caused by the activities of the telecommunications provider in the right-of-way of a county if
644 the telecommunications tax or fee:

645 (i) is imposed in accordance with Section 72-7-102; and

646 (ii) is not related to:

647 (A) a county's loss of use of a highway as a result of the activities of the

648 telecommunications provider in a right-of-way; or

649 (B) increased deterioration of a highway as a result of the activities of the

650 telecommunications provider in a right-of-way; or

651 (b) on a person that:

652 (i) is not subject to a county telecommunications license tax under this part; and

653 (ii) locates telecommunications facilities, as defined in Section 72-7-108, in the county.

654 (2) Subsection (1)(a) may not be interpreted as exempting a telecommunications
655 provider from complying with any ordinance:

656 (a) related to excavation, construction, or installation of a telecommunications facility;

657 and

658 (b) that addresses the safety and quality standards of the county for excavation,
659 construction, or installation.

660 (3) A telecommunications tax or fee imposed under Subsection (1)(b) shall be
661 imposed:

662 (a) by ordinance; and

663 (b) on a competitively neutral basis.

664 Section 18. Section **17-50-707** is enacted to read:

665 **17-50-707. Attributing the gross receipts from telecommunications service to a**
666 **county -- Rate impact.**

667 (1) The gross receipts from a telecommunications service are attributed to a county if
668 the gross receipts are from a transaction for telecommunications service that is located within
669 the county:

670 (a) for purposes of sales and use taxes under Title 59, Chapter 12, Sales and Use Tax
671 Act; and

672 (b) determined in accordance with Section 59-12-215.

673 (2) (a) The rate imposed on the gross receipts for telecommunications service shall be
674 determined in accordance with Subsection (2)(b) if the location of a transaction for
675 telecommunications service is determined under Subsection (1) to be a county other than the
676 county in which is located:

677 (i) for telecommunications service other than mobile telecommunications service, the
678 customer's service address; or

- 679 (ii) for mobile telecommunications service, the customer's primary place of use.
- 680 (b) The rate imposed on the gross receipts for telecommunications service described in
- 681 Subsection (2)(a) shall be the lower of:
- 682 (i) the rate imposed by the taxing jurisdiction in which the transaction is located under
- 683 Subsection (1); or
- 684 (ii) the rate imposed by the county in which the transaction is located:
- 685 (A) for telecommunications service other than mobile telecommunications service, the
- 686 customer's service address; or
- 687 (B) for mobile telecommunications service, the customer's primary place of use.

688 Section 19. Section **17-50-708** is enacted to read:

689 **17-50-708. Procedure for taxes erroneously recovered from customers.**

690 A customer may not bring a cause of action against a telecommunications provider on
691 the basis that the telecommunications provider erroneously recovered from the customer
692 county telecommunications license taxes authorized by this part unless the customer meets the
693 same requirements that a purchaser is required to meet to bring a cause of action against a
694 seller for a refund or credit as provided in Subsection 59-12-110.1(3).

695 Section 20. Section **17-50-709** is enacted to read:

696 **17-50-709. Transactions consisting of telecommunications service and**
697 **nontelecommunications services.**

698 (1) For purposes of this section, "nontelecommunications services" means services or
699 tangible personal property that are:

- 700 (a) not telecommunications services; and
- 701 (b) provided by a telecommunications provider to a customer.

702 (2) Except to the extent prohibited by federal law, if a telecommunications provider
703 provides nontelecommunications services to a customer as part of the same transaction in
704 which the telecommunications provider provides telecommunications services, the gross
705 receipts from the nontelecommunications services provided by the telecommunications
706 provider are subject to a tax under this part unless:

- 707 (a) the charge for the nontelecommunications services is separately identified in the
- 708 statement of the transaction with the customer of the telecommunications service; or
- 709 (b) from the books and records of the telecommunications provider that are kept in the

710 regular course of business, the telecommunications provider can reasonably identify the portion
711 of the total charge for the transaction that is attributable to:

712 (i) the nontelecommunications services; and

713 (ii) the telecommunications service.

714 Section 21. Section **17-50-710** is enacted to read:

715 **17-50-710. Existing telecommunications franchise or contractual franchise fees.**

716 (1) Except as authorized in Subsection (2), Section 59-12-203, or Section 17-50-704, a
717 county may not:

718 (a) impose on, charge, or collect a franchise tax or contractual franchise fee from a
719 telecommunications supplier; or

720 (b) collect a franchise tax or contractual franchise fee pursuant to a franchise agreement
721 in effect on July 1, 2010.

722 (2) (a) A county that collects a contractual franchise fee from a telecommunications
723 supplier pursuant to a franchise agreement in effect on July 1, 2010, may continue to collect
724 that fee at the same rate for the remaining term of the franchise agreement, except the county
725 shall provide a credit against the county telecommunications license tax in the amount of the
726 contractual franchise fee paid by the telecommunications provider pursuant to Subsection
727 17-50-704(5) and Subsection (2)(b).

728 (b) A county may not provide a credit described in Subsection (2)(a) for a service in a
729 franchise agreement other than a telecommunication service.

730 (3) (a) Subject to the requirements of Subsection (3)(b), a franchise agreement between
731 a county and a telecommunications provider may contain a provision that:

732 (i) requires the telecommunications provider by agreement to pay a contractual
733 franchise fee that is otherwise prohibited under this part; and

734 (ii) imposes the contractual franchise fee on or after the day on which this part:

735 (A) is repealed, invalidated, or the maximum allowable rate provided in Section
736 17-50-703 is reduced; and

737 (B) is not superseded by a law imposing a substantially equivalent tax.

738 (b) A county may not charge a contractual franchise fee under the provisions permitted
739 by Subsection (3)(a) unless the county charges an equal contractual franchise fee or a tax on all
740 telecommunications providers.

741 (4) This section may not affect the validity of any existing or future franchise
 742 agreement and any franchise agreement effective on July 1, 2010, shall remain in full force and
 743 effect, unless otherwise terminated or altered by agreement or applicable law.

744 Section 22. Section **59-1-302** is amended to read:

745 **59-1-302. Penalty for nonpayment of certain taxes -- Jeopardy proceedings.**

746 (1) This section applies to the following:

747 (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

748 (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax

749 Act;

750 (c) a tax under Chapter 10, Part 4, Withholding of Tax;

751 (d) a tax under Chapter 12, Sales and Use Tax Act;

752 (e) a tax under Chapter 13, Part 2, Motor Fuel;

753 (f) a tax under Chapter 13, Part 3, Special Fuel; [~~and~~]

754 (g) a tax under Chapter 13, Part 4, Aviation Fuel[?];

755 (h) a tax under Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; and

756 (i) a tax under Title 17, Chapter 50, Part 7, County Telecommunications License Tax

757 Act.

758 (2) (a) A person required to collect, truthfully account for, and pay over a tax listed in
 759 Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over
 760 the tax, or attempts in any manner to evade or defeat the tax or the payment of the tax, is liable
 761 for a penalty equal to the total amount of the tax evaded, not collected, not accounted for, or
 762 not paid over.

763 (b) The penalty described in Subsection (2)(a) is in addition to other penalties provided
 764 by law.

765 (3) (a) If the commission determines in accordance with Subsection (2) that a person is
 766 liable for the penalty, the commission shall mail a notice of the proposed penalty to the person.

767 (b) The notice of proposed penalty shall:

768 (i) set forth the basis of the assessment; and

769 (ii) be mailed:

770 (A) in accordance with Section 59-1-1404; and

771 (B) to the person's last-known address.

772 (4) Upon receipt of the notice of proposed penalty, the person against whom the
773 penalty is proposed may:

774 (a) pay the amount of the proposed penalty at the place and time stated in the notice; or
775 (b) proceed in accordance with the review procedures of Subsection (5).

776 (5) A person against whom a penalty is proposed in accordance with Subsections (2)
777 and (3) may contest the proposed penalty by filing a petition for an adjudicative proceeding
778 with the commission.

779 (6) If the commission determines that the collection of the penalty is in jeopardy, this
780 section does not prevent the immediate collection of the penalty in accordance with the
781 procedures and requirements for an emergency proceeding under Title 63G, Chapter 4,
782 Administrative Procedures Act.

783 (7) (a) In a hearing before the commission and in a judicial review of the hearing, the
784 commission and the court shall consider any inference and evidence that a person has willfully
785 failed to collect, truthfully account for, or pay over a tax listed in Subsection (1).

786 (b) It is prima facie evidence that a person has willfully failed to collect, truthfully
787 account for, or pay over a tax listed in Subsection (1) if the commission or a court finds that the
788 person charged with the responsibility of collecting, accounting for, or paying over the taxes:

789 (i) made a voluntary, conscious, and intentional decision to prefer other creditors over
790 the state government or utilize the tax money for personal purposes;

791 (ii) recklessly disregarded obvious or known risks that resulted in the failure to collect,
792 truthfully account for, or pay over the tax; or

793 (iii) failed to investigate or to correct mismanagement, having notice that the tax was
794 not or is not being collected, accounted for, or paid over as provided by law.

795 (c) The commission or court is not required to find a bad motive or specific intent to
796 defraud the government or deprive the government of revenue to establish willfulness under
797 this section.

798 (d) If the commission determines that a person is liable for the penalty under
799 Subsection (2), the commission shall assess the penalty and give notice and demand for
800 payment in accordance with Section 59-1-1411.

801 Section 23. Section **59-1-401** is amended to read:

802 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**

803 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
804 **interest.**

805 (1) As used in this section:

806 (a) "Activated tax, fee, or charge" means a tax, fee, or charge with respect to which the
807 commission:

808 (i) has implemented the commission's GenTax system; and

809 (ii) at least 30 days before implementing the commission's GenTax system as described
810 in Subsection (1)(a)(i), has provided notice in a conspicuous place on the commission's website
811 stating:

812 (A) the date the commission will implement the GenTax system with respect to the tax,
813 fee, or charge; and

814 (B) that, at the time the commission implements the GenTax system with respect to the
815 tax, fee, or charge:

816 (I) a person that files a return after the due date as described in Subsection (2)~~(b)~~(a) is
817 subject to the penalty described in Subsection (2)(c)(ii); and

818 (II) a person that fails to pay the tax, fee, or charge as described in Subsection (3)(a) is
819 subject to the penalty described in Subsection (3)(b)(ii).

820 (b) "Activation date for a tax, fee, or charge" means with respect to a tax, fee, or
821 charge, the later of:

822 (i) the date on which the commission implements the commission's GenTax system
823 with respect to the tax, fee, or charge; or

824 (ii) 30 days after the date the commission provides the notice described in Subsection
825 (1)(a)(ii) with respect to the tax, fee, or charge.

826 (c) "Tax, fee, or charge" means:

827 (i) a tax, fee, or charge the commission administers under:

828 (A) this title;

829 (B) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

830 (C) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

831 (D) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;

832 (E) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;

833 ~~(F)~~ (F) Section 19-6-410.5;

834 ~~[(E)]~~ (G) Section 19-6-714;

835 ~~[(F)]~~ (H) Section 19-6-805;

836 ~~[(G)]~~ (I) Section 40-6-14;

837 ~~[(H)]~~ (J) Section 69-2-5;

838 ~~[(I)]~~ (K) Section 69-2-5.5; or

839 ~~[(J)]~~ (L) Section 69-2-5.6; or

840 (ii) another amount that by statute is subject to a penalty imposed under this section.

841 (d) "Unactivated tax, fee, or charge" means a tax, fee, or charge except for an activated

842 tax, fee, or charge.

843 (2) (a) The due date for filing a return is:

844 (i) if the person filing the return is not allowed by law an extension of time for filing
845 the return, the day on which the return is due as provided by law; or

846 (ii) if the person filing the return is allowed by law an extension of time for filing the
847 return, the earlier of:

848 (A) the date the person files the return; or

849 (B) the last day of that extension of time as allowed by law.

850 (b) A penalty in the amount described in Subsection (2)(c) is imposed if a person files a
851 return after the due date described in Subsection (2)(a).

852 (c) For purposes of Subsection (2)(b), the penalty is an amount equal to the greater of:

853 (i) if the return described in Subsection (2)(b) is filed with respect to an unactivated
854 tax, fee, or charge:

855 (A) \$20; or

856 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or

857 (ii) if the return described in Subsection (2)(b) is filed with respect to an activated tax,
858 fee, or charge, beginning on the activation date for the tax, fee, or charge:

859 (A) \$20; or

860 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the return is
861 filed no later than five days after the due date described in Subsection (2)(a);

862 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the return is filed
863 more than five days after the due date but no later than 15 days after the due date described in
864 Subsection (2)(a); or

865 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the return is
866 filed more than 15 days after the due date described in Subsection (2)(a).

867 (d) This Subsection (2) does not apply to:

868 (i) an amended return; or

869 (ii) a return with no tax due.

870 (3) (a) A person is subject to a penalty for failure to pay a tax, fee, or charge if:

871 (i) the person files a return on or before the due date for filing a return described in
872 Subsection (2)(a), but fails to pay the tax, fee, or charge due on the return on or before that due
873 date;

874 (ii) the person:

875 (A) is subject to a penalty under Subsection (2)(b); and

876 (B) fails to pay the tax, fee, or charge due on a return within a 90-day period after the
877 due date for filing a return described in Subsection (2)(a);

878 (iii) (A) the person is subject to a penalty under Subsection (2)(b); and

879 (B) the commission estimates an amount of tax due for that person in accordance with
880 Subsection 59-1-1406(2);

881 (iv) the person:

882 (A) is mailed a notice of deficiency; and

883 (B) within a 30-day period after the day on which the notice of deficiency described in
884 Subsection (3)(a)(iv)(A) is mailed:

885 (I) does not file a petition for redetermination or a request for agency action; and

886 (II) fails to pay the tax, fee, or charge due on a return;

887 (v) (A) the commission:

888 (I) issues an order constituting final agency action resulting from a timely filed petition
889 for redetermination or a timely filed request for agency action; or

890 (II) is considered to have denied a request for reconsideration under Subsection
891 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a timely filed
892 request for agency action; and

893 (B) the person fails to pay the tax, fee, or charge due on a return within a 30-day period
894 after the date the commission:

895 (I) issues the order constituting final agency action described in Subsection

896 (3)(a)(v)(A)(I); or
897 (II) is considered to have denied the request for reconsideration described in
898 Subsection (3)(a)(v)(A)(II); or
899 (vi) the person fails to pay the tax, fee, or charge within a 30-day period after the date
900 of a final judicial decision resulting from a timely filed petition for judicial review.
901 (b) For purposes of Subsection (3)(a), the penalty is an amount equal to the greater of:
902 (i) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
903 respect to an unactivated tax, fee, or charge:
904 (A) \$20; or
905 (B) 10% of the unpaid unactivated tax, fee, or charge due on the return; or
906 (ii) if the failure to pay a tax, fee, or charge as described in Subsection (3)(a) is with
907 respect to an activated tax, fee, or charge, beginning on the activation date:
908 (A) \$20; or
909 (B) (I) 2% of the unpaid activated tax, fee, or charge due on the return if the activated
910 tax, fee, or charge due on the return is paid no later than five days after the due date for filing a
911 return described in Subsection (2)(a);
912 (II) 5% of the unpaid activated tax, fee, or charge due on the return if the activated tax,
913 fee, or charge due on the return is paid more than five days after the due date for filing a return
914 described in Subsection (2)(a) but no later than 15 days after that due date; or
915 (III) 10% of the unpaid activated tax, fee, or charge due on the return if the activated
916 tax, fee, or charge due on the return is paid more than 15 days after the due date for filing a
917 return described in Subsection (2)(a).
918 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
919 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
920 shall be added a penalty in an amount determined by applying the interest rate provided under
921 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
922 of the underpayment.
923 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
924 excess of the required installment over the amount, if any, of the installment paid on or before
925 the due date for the installment.
926 (ii) The period of the underpayment shall run from the due date for the installment to

927 whichever of the following dates is the earlier:

928 (A) the original due date of the tax return, without extensions, for the taxable year; or

929 (B) with respect to any portion of the underpayment, the date on which that portion is
930 paid.

931 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
932 against unpaid required installments in the order in which the installments are required to be
933 paid.

934 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
935 person allowed by law an extension of time for filing a corporate franchise or income tax return
936 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
937 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
938 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
939 including the extension of time, the person fails to pay:

940 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
941 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

942 (ii) for a person filing an individual income tax return under Chapter 10, Individual
943 Income Tax Act, the payment required by Subsection 59-10-516(2).

944 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
945 extension of time for filing the return is an amount equal to 2% of the tax due on the return,
946 unpaid as of the day on which the return is due as provided by law.

947 (6) If a person does not file a return within an extension of time allowed by Section
948 59-7-505 or 59-10-516, the person:

949 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

950 (b) is subject to a penalty in an amount equal to the sum of:

951 (i) a late file penalty in an amount equal to the greater of:

952 (A) \$20; or

953 (B) 10% of the tax due on the return, unpaid as of the day on which the return is due as
954 provided by law, not including the extension of time; and

955 (ii) a late pay penalty in an amount equal to the greater of:

956 (A) \$20; or

957 (B) 10% of the unpaid tax due on the return, unpaid as of the day on which the return is

958 due as provided by law, not including the extension of time.

959 (7) (a) Additional penalties for an underpayment of a tax, fee, or charge are as provided
960 in this Subsection (7)(a).

961 (i) Except as provided in Subsection (7)(c), if any portion of an underpayment of a tax,
962 fee, or charge is due to negligence, the penalty is 10% of the portion of the underpayment that
963 is due to negligence.

964 (ii) Except as provided in Subsection (7)(d), if any portion of an underpayment of a
965 tax, fee, or charge is due to intentional disregard of law or rule, the penalty is 15% of the entire
966 underpayment.

967 (iii) If any portion of an underpayment is due to an intent to evade a tax, fee, or charge,
968 the penalty is the greater of \$500 per period or 50% of the entire underpayment.

969 (iv) If any portion of an underpayment is due to fraud with intent to evade a tax, fee, or
970 charge, the penalty is the greater of \$500 per period or 100% of the entire underpayment.

971 (b) If the commission determines that a person is liable for a penalty imposed under
972 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the person of the proposed
973 penalty.

974 (i) The notice of proposed penalty shall:

975 (A) set forth the basis of the assessment; and

976 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

977 (ii) Upon receipt of the notice of proposed penalty, the person against whom the
978 penalty is proposed may:

979 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

980 or

981 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

982 (iii) A person against whom a penalty is proposed in accordance with this Subsection
983 (7) may contest the proposed penalty by filing a petition for an adjudicative proceeding with
984 the commission.

985 (iv) (A) If the commission determines that a person is liable for a penalty under this
986 Subsection (7), the commission shall assess the penalty and give notice and demand for
987 payment.

988 (B) The commission shall mail the notice and demand for payment described in

989 Subsection (7)(b)(iv)(A):

990 (I) to the person's last-known address; and

991 (II) in accordance with Section 59-1-1404.

992 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not

993 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

994 (i) a court of competent jurisdiction issues a final unappealable judgment or order

995 determining that:

996 (A) the seller meets one or more of the criteria described in Subsection

997 59-12-107(1)(a); and

998 (B) the commission or a county, city, or town may require the seller to collect a tax

999 under Subsections 59-12-103(2)(a) through (d); or

1000 (ii) the commission issues a final unappealable administrative order determining that:

1001 (A) the seller meets one or more of the criteria described in Subsection

1002 59-12-107(1)(a); and

1003 (B) the commission or a county, city, or town may require the seller to collect a tax

1004 under Subsections 59-12-103(2)(a) through (d).

1005 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not

1006 subject to the penalty under Subsection (7)(a)(ii) if:

1007 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order

1008 determining that:

1009 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

1010 and

1011 (II) the commission or a county, city, or town may require the seller to collect a tax

1012 under Subsections 59-12-103(2)(a) through (d); or

1013 (B) the commission issues a final unappealable administrative order determining that:

1014 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

1015 and

1016 (II) the commission or a county, city, or town may require the seller to collect a tax

1017 under Subsections 59-12-103(2)(a) through (d); and

1018 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a

1019 nonfrivolous argument for the extension, modification, or reversal of existing law or the

1020 establishment of new law.

1021 (8) The penalty for failure to file an information return, information report, or a
1022 complete supporting schedule is \$50 for each information return, information report, or
1023 supporting schedule up to a maximum of \$1,000.

1024 (9) If a person, in furtherance of a frivolous position, has a prima facie intent to delay
1025 or impede administration of a law relating to a tax, fee, or charge and files a purported return
1026 that fails to contain information from which the correctness of reported tax, fee, or charge
1027 liability can be determined or that clearly indicates that the tax, fee, or charge liability shown is
1028 substantially incorrect, the penalty is \$500.

1029 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by
1030 Subsection 59-12-108(1)(a):

1031 (i) is subject to a penalty described in Subsection (2); and

1032 (ii) may not retain the percentage of sales and use taxes that would otherwise be
1033 allowable under Subsection 59-12-108(2).

1034 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as
1035 required by Subsection 59-12-108(1)(a)(ii)(B):

1036 (i) is subject to a penalty described in Subsection (2); and

1037 (ii) may not retain the percentage of sales and use taxes that would otherwise be
1038 allowable under Subsection 59-12-108(2).

1039 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:

1040 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
1041 following documents:

1042 (A) a return;

1043 (B) an affidavit;

1044 (C) a claim; or

1045 (D) a document similar to Subsections (11)(a)(i)(A) through (C);

1046 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
1047 will be used in connection with any material matter administered by the commission; and

1048 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
1049 with any material matter administered by the commission, would result in an understatement of
1050 another person's liability for a tax, fee, or charge.

- 1051 (b) The following acts apply to Subsection (11)(a)(i):
- 1052 (i) preparing any portion of a document described in Subsection (11)(a)(i);
- 1053 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
- 1054 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
- 1055 (iv) advising in the preparation or presentation of any portion of a document described
- 1056 in Subsection (11)(a)(i);
- 1057 (v) aiding in the preparation or presentation of any portion of a document described in
- 1058 Subsection (11)(a)(i);
- 1059 (vi) assisting in the preparation or presentation of any portion of a document described
- 1060 in Subsection (11)(a)(i); or
- 1061 (vii) counseling in the preparation or presentation of any portion of a document
- 1062 described in Subsection (11)(a)(i).
- 1063 (c) For purposes of Subsection (11)(a), the penalty:
- 1064 (i) shall be imposed by the commission;
- 1065 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
- 1066 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and
- 1067 (iii) is in addition to any other penalty provided by law.
- 1068 (d) The commission may seek a court order to enjoin a person from engaging in
- 1069 conduct that is subject to a penalty under this Subsection (11).
- 1070 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1071 commission may make rules prescribing the documents that are similar to Subsections
- 1072 (11)(a)(i)(A) through (C).
- 1073 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
- 1074 provided in Subsections (12)(b) through (e).
- 1075 (b) (i) A person who is required by this title or any laws the commission administers or
- 1076 regulates to register with or obtain a license or permit from the commission, who operates
- 1077 without having registered or secured a license or permit, or who operates when the registration,
- 1078 license, or permit is expired or not current, is guilty of a class B misdemeanor.
- 1079 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
- 1080 penalty may not:
- 1081 (A) be less than \$500; or

1082 (B) exceed \$1,000.

1083 (c) (i) A person who, with intent to evade a tax, fee, or charge or requirement of this
1084 title or any lawful requirement of the commission, fails to make, render, sign, or verify a return
1085 or to supply information within the time required by law, or who makes, renders, signs, or
1086 verifies a false or fraudulent return or statement, or who supplies false or fraudulent
1087 information, is guilty of a third degree felony.

1088 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
1089 penalty may not:

1090 (A) be less than \$1,000; or

1091 (B) exceed \$5,000.

1092 (d) (i) A person who intentionally or willfully attempts to evade or defeat a tax, fee, or
1093 charge or the payment of a tax, fee, or charge is, in addition to other penalties provided by law,
1094 guilty of a second degree felony.

1095 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
1096 penalty may not:

1097 (A) be less than \$1,500; or

1098 (B) exceed \$25,000.

1099 (e) (i) A person is guilty of a second degree felony if that person commits an act:

1100 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
1101 documents:

1102 (I) a return;

1103 (II) an affidavit;

1104 (III) a claim; or

1105 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

1106 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
1107 Subsection (12)(e)(i)(A):

1108 (I) is false or fraudulent as to any material matter; and

1109 (II) could be used in connection with any material matter administered by the
1110 commission.

1111 (ii) The following acts apply to Subsection (12)(e)(i):

1112 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

- 1113 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);
- 1114 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);
- 1115 (D) advising in the preparation or presentation of any portion of a document described
- 1116 in Subsection (12)(e)(i)(A);
- 1117 (E) aiding in the preparation or presentation of any portion of a document described in
- 1118 Subsection (12)(e)(i)(A);
- 1119 (F) assisting in the preparation or presentation of any portion of a document described
- 1120 in Subsection (12)(e)(i)(A); or
- 1121 (G) counseling in the preparation or presentation of any portion of a document
- 1122 described in Subsection (12)(e)(i)(A).
- 1123 (iii) This Subsection (12)(e) applies:
- 1124 (A) regardless of whether the person for which the document described in Subsection
- 1125 (12)(e)(i)(A) is prepared or presented:
- 1126 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or
- 1127 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and
- 1128 (B) in addition to any other penalty provided by law.
- 1129 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
- 1130 penalty may not:
- 1131 (A) be less than \$1,500; or
- 1132 (B) exceed \$25,000.
- 1133 (v) The commission may seek a court order to enjoin a person from engaging in
- 1134 conduct that is subject to a penalty under this Subsection (12)(e).
- 1135 (vi) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
- 1136 the commission may make rules prescribing the documents that are similar to Subsections
- 1137 (12)(e)(i)(A)(I) through (III).
- 1138 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
- 1139 the later of six years:
- 1140 (i) from the date the tax should have been remitted; or
- 1141 (ii) after the day on which the person commits the criminal offense.
- 1142 (13) Upon making a record of its actions, and upon reasonable cause shown, the
- 1143 commission may waive, reduce, or compromise any of the penalties or interest imposed under

1144 this part.

1145 Section 24. Section **59-1-1402** is amended to read:

1146 **59-1-1402. Definitions.**

1147 As used in this part:

1148 (1) "Administrative cost" means a fee imposed to cover:

1149 (a) the cost of filing;

1150 (b) the cost of administering a garnishment; or

1151 (c) a cost similar to Subsection (1)(a) or (b) as determined by the commission by rule

1152 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1153 (2) "Books and records" means the following made available in printed or electronic

1154 format:

1155 (a) an account;

1156 (b) a book;

1157 (c) an invoice;

1158 (d) a memorandum;

1159 (e) a paper;

1160 (f) a record; or

1161 (g) an item similar to Subsections (2)(a) through (f) as determined by the commission

1162 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1163 (3) "Deficiency" means:

1164 (a) the amount by which a tax, fee, or charge exceeds the difference between:

1165 (i) the sum of:

1166 (A) the amount shown as the tax, fee, or charge by a person on the person's return; and

1167 (B) any amount previously assessed, or collected without assessment, as a deficiency;

1168 and

1169 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect

1170 to that tax, fee, or charge; or

1171 (b) if a person does not show an amount as a tax, fee, or charge on the person's return,

1172 or if a person does not make a return, the amount by which the tax, fee, or charge exceeds:

1173 (i) the amount previously assessed, or collected without assessment, as a deficiency;

1174 and

1175 (ii) any amount previously abated, credited, refunded, or otherwise repaid with respect
1176 to that tax, fee, or charge.

1177 (4) "Garnishment" means any legal or equitable procedure through which one or more
1178 of the following are required to be withheld for payment of an amount a person owes:

1179 (a) an asset of the person held by another person; or

1180 (b) the earnings of the person.

1181 (5) "Liability" means the following that a person is required to remit to the
1182 commission:

1183 (a) a tax, fee, or charge;

1184 (b) an addition to a tax, fee, or charge;

1185 (c) an administrative cost;

1186 (d) interest that accrues in accordance with Section 59-1-402; or

1187 (e) a penalty that accrues in accordance with Section 59-1-401.

1188 (6) (a) Subject to Subsection (6)(b), "mathematical error" is as defined in Section
1189 6213(g)(2), Internal Revenue Code.

1190 (b) The reference to Section 6213(g)(2), Internal Revenue Code, in Subsection (6)(a)
1191 means:

1192 (i) the reference to Section 6213(g)(2), Internal Revenue Code, in effect for the taxable
1193 year; or

1194 (ii) a corresponding or comparable provision of the Internal Revenue Code as
1195 amended, redesignated, or reenacted.

1196 (7) (a) Except as provided in Subsection (7)(b), "tax, fee, or charge" means a tax, fee,
1197 or charge the commission administers under:

1198 (i) this title;

1199 (ii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

1200 (iii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;

1201 (iv) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;

1202 (v) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;

1203 [~~(iv)~~] (vi) Section 19-6-410.5;

1204 [~~(v)~~] (vii) Section 19-6-714;

1205 [~~(vi)~~] (viii) Section 19-6-805;

1206 [~~(vii)~~] (ix) Section 69-2-5;
1207 [~~(viii)~~] (x) Section 69-2-5.5; or
1208 [~~(ix)~~] (xi) Section 69-2-5.6.
1209 (b) "Tax, fee, or charge" does not include a tax, fee, or charge imposed under:
1210 (i) Chapter 2, Property Tax Act;
1211 (ii) Chapter 3, Tax Equivalent Property Act; or
1212 (iii) Chapter 4, Privilege Tax.
1213 (8) "Transferee" means:
1214 (a) a devisee;
1215 (b) a distributee;
1216 (c) a donee;
1217 (d) an heir;
1218 (e) a legatee; or
1219 (f) a person similar to Subsections (8)(a) through (e) as determined by the commission
1220 by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
1221 Section 25. Section **59-12-107** is amended to read:
1222 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**
1223 **-- Returns -- Reports -- Direct payment by purchaser of vehicle -- Other liability for**
1224 **collection -- Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**
1225 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 or 59-12-123
1226 and subject to Subsection (1)(e), each seller shall pay or collect and remit the sales and use
1227 taxes imposed by this chapter if within this state the seller:
1228 (i) has or utilizes:
1229 (A) an office;
1230 (B) a distribution house;
1231 (C) a sales house;
1232 (D) a warehouse;
1233 (E) a service enterprise; or
1234 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);
1235 (ii) maintains a stock of goods;
1236 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the

- 1237 state, unless the seller's only activity in the state is:
- 1238 (A) advertising; or
- 1239 (B) solicitation by:
- 1240 (I) direct mail;
- 1241 (II) electronic mail;
- 1242 (III) the Internet;
- 1243 (IV) telecommunications service; or
- 1244 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);
- 1245 (iv) regularly engages in the delivery of property in the state other than by:
- 1246 (A) common carrier; or
- 1247 (B) United States mail; or
- 1248 (v) regularly engages in an activity directly related to the leasing or servicing of
- 1249 property located within the state.
- 1250 (b) A seller that does not meet one or more of the criteria provided for in Subsection
- 1251 (1)(a):
- 1252 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 1253 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 1254 (B) remit the tax to the commission as provided in this part; or
- 1255 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described
- 1256 in Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 1257 (c) The collection and remittance of a tax under this chapter by a seller that is
- 1258 registered under the agreement may not be used as a factor in determining whether that seller is
- 1259 required by Subsection (1)(a) to:
- 1260 (i) pay a tax, fee, or charge under:
- 1261 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 1262 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 1263 (C) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
- 1264 (D) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
- 1265 [~~(E)~~] (E) Section 19-6-714;
- 1266 [~~(F)~~] (F) Section 19-6-805;
- 1267 [~~(G)~~] (G) Section 69-2-5;

- 1268 [~~F~~] (H) Section 69-2-5.5;
- 1269 [~~G~~] (I) Section 69-2-5.6; or
- 1270 [~~H~~] (J) this title; or
- 1271 (ii) collect and remit a tax, fee, or charge under:
- 1272 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
- 1273 (B) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
- 1274 (C) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
- 1275 (D) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
- 1276 [~~C~~] (E) Section 19-6-714;
- 1277 [~~D~~] (F) Section 19-6-805;
- 1278 [~~E~~] (G) Section 69-2-5;
- 1279 [~~F~~] (H) Section 69-2-5.5;
- 1280 [~~G~~] (I) Section 69-2-5.6; or
- 1281 [~~H~~] (J) this title.
- 1282 (d) A person shall pay a use tax imposed by this chapter on a transaction described in
- 1283 Subsection 59-12-103(1) if:
- 1284 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- 1285 (ii) the person:
- 1286 (A) stores the tangible personal property or product transferred electronically in the
- 1287 state;
- 1288 (B) uses the tangible personal property or product transferred electronically in the state;
- 1289 or
- 1290 (C) consumes the tangible personal property or product transferred electronically in the
- 1291 state.
- 1292 (e) The ownership of property that is located at the premises of a printer's facility with
- 1293 which the retailer has contracted for printing and that consists of the final printed product,
- 1294 property that becomes a part of the final printed product, or copy from which the printed
- 1295 product is produced, shall not result in the retailer being considered to have or maintain an
- 1296 office, distribution house, sales house, warehouse, service enterprise, or other place of
- 1297 business, or to maintain a stock of goods, within this state.
- 1298 (f) (i) As used in this Subsection (1)(f):

1299 (A) "Affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
1300 includes a corporation that is qualified to do business but is not otherwise doing business in
1301 this state.

1302 (B) "Common ownership" is as defined in Section 59-7-101.

1303 (C) "Related seller" means a seller that:

1304 (I) is not required to pay or collect and remit sales and use taxes under Subsection
1305 (1)(a) or Section 59-12-103.1;

1306 (II) is:

1307 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
1308 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

1309 (Bb) a limited liability company owned by the parent corporation of an affiliated group
1310 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
1311 use taxes under Subsection (1)(a); and

1312 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

1313 (ii) A seller is not required to pay or collect and remit sales and use taxes under
1314 Subsection (1)(a):

1315 (A) if the seller is a related seller;

1316 (B) if the seller to which the related seller is related does not engage in any of the
1317 following activities on behalf of the related seller:

1318 (I) advertising;

1319 (II) marketing;

1320 (III) sales; or

1321 (IV) other services; and

1322 (C) if the seller to which the related seller is related accepts the return of an item sold
1323 by the related seller, the seller to which the related seller is related accepts the return of that
1324 item:

1325 (I) sold by a seller that is not a related seller; and

1326 (II) on the same terms as the return of an item sold by that seller to which the related
1327 seller is related.

1328 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
1329 collected from a purchaser.

1330 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
1331 cent, in excess of the tax computed at the rates prescribed by this chapter.

1332 (c) (i) Each seller shall:

1333 (A) give the purchaser a receipt for the tax collected; or

1334 (B) bill the tax as a separate item and declare the name of this state and the seller's
1335 sales and use tax license number on the invoice for the sale.

1336 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
1337 and relieves the purchaser of the liability for reporting the tax to the commission as a
1338 consumer.

1339 (d) A seller is not required to maintain a separate account for the tax collected, but is
1340 considered to be a person charged with receipt, safekeeping, and transfer of public moneys.

1341 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
1342 benefit of the state and for payment to the commission in the manner and at the time provided
1343 for in this chapter.

1344 (f) If any seller, during any reporting period, collects as a tax an amount in excess of
1345 the lawful state and local percentage of total taxable sales allowed under this chapter, the seller
1346 shall remit to the commission the full amount of the tax imposed under this chapter, plus any
1347 excess.

1348 (g) If the accounting methods regularly employed by the seller in the transaction of the
1349 seller's business are such that reports of sales made during a calendar month or quarterly period
1350 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
1351 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
1352 jeopardize collection of the tax.

1353 (3) (a) Except as provided in Subsections (4) through (6) and Section 59-12-108, the
1354 sales or use tax imposed by this chapter is due and payable to the commission quarterly on or
1355 before the last day of the month next succeeding each calendar quarterly period.

1356 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
1357 calendar quarterly period, file with the commission a return for the preceding quarterly period.

1358 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
1359 tax required under this chapter to be collected or paid for the period covered by the return.

1360 (c) Except as provided in Subsection (4)(c), a return shall contain information and be in

1361 a form the commission prescribes by rule.

1362 (d) The sales tax as computed in the return shall be based upon the total nonexempt
1363 sales made during the period, including both cash and charge sales.

1364 (e) The use tax as computed in the return shall be based upon the total amount of
1365 purchases for storage, use, or other consumption in this state made during the period, including
1366 both by cash and by charge.

1367 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with Title 63G, Chapter 3,
1368 Utah Administrative Rulemaking Act, the commission may by rule extend the time for making
1369 returns and paying the taxes.

1370 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

1371 (g) The commission may require returns and payment of the tax to be made for other
1372 than quarterly periods if the commission considers it necessary in order to ensure the payment
1373 of the tax imposed by this chapter.

1374 (h) (i) The commission may require a seller that files a simplified electronic return with
1375 the commission to file an additional electronic report with the commission.

1376 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1377 commission may make rules providing:

1378 (A) the information required to be included in the additional electronic report described
1379 in Subsection (3)(h)(i); and

1380 (B) one or more due dates for filing the additional electronic report described in
1381 Subsection (3)(h)(i).

1382 (4) (a) As used in this Subsection (4) and Subsection (5)(b), "remote seller" means a
1383 seller that is:

1384 (i) registered under the agreement;

1385 (ii) described in Subsection (1)(b); and

1386 (iii) not a:

1387 (A) model 1 seller;

1388 (B) model 2 seller; or

1389 (C) model 3 seller.

1390 (b) (i) Except as provided in Subsection (4)(b)(ii), a tax a remote seller collects in
1391 accordance with Subsection (1)(b) is due and payable:

- 1392 (A) to the commission;
- 1393 (B) annually; and
- 1394 (C) on or before the last day of the month immediately following the last day of each
- 1395 calendar year.
- 1396 (ii) The commission may require that a tax a remote seller collects in accordance with
- 1397 Subsection (1)(b) be due and payable:
- 1398 (A) to the commission; and
- 1399 (B) on the last day of the month immediately following any month in which the seller
- 1400 accumulates a total of at least \$1,000 in agreement sales and use tax.
- 1401 (c) (i) If a remote seller remits a tax to the commission in accordance with Subsection
- 1402 (4)(b), the remote seller shall file a return:
- 1403 (A) with the commission;
- 1404 (B) with respect to the tax;
- 1405 (C) containing information prescribed by the commission; and
- 1406 (D) on a form prescribed by the commission.
- 1407 (ii) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 1408 commission shall make rules prescribing:
- 1409 (A) the information required to be contained in a return described in Subsection
- 1410 (4)(a)(i); and
- 1411 (B) the form described in Subsection (4)(c)(i)(D).
- 1412 (d) A tax a remote seller collects in accordance with this Subsection (4) shall be
- 1413 calculated on the basis of the total amount of taxable transactions under Subsection
- 1414 59-12-103(1) the remote seller completes, including:
- 1415 (i) a cash transaction; and
- 1416 (ii) a charge transaction.
- 1417 (5) (a) Except as provided in Subsection (5)(b), a tax a seller that files a simplified
- 1418 electronic return collects in accordance with this chapter is due and payable:
- 1419 (i) monthly on or before the last day of the month immediately following the month for
- 1420 which the seller collects a tax under this chapter; and
- 1421 (ii) for the month for which the seller collects a tax under this chapter.
- 1422 (b) A tax a remote seller that files a simplified electronic return collects in accordance

1423 with this chapter is due and payable as provided in Subsection (4).

1424 (6) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
1425 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
1426 titling or registration under the laws of this state.

1427 (b) The commission shall collect the tax described in Subsection (6)(a) when the
1428 vehicle is titled or registered.

1429 (7) If any sale of tangible personal property or any other taxable transaction under
1430 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not
1431 responsible for the collection or payment of the tax imposed on the sale and the retailer is
1432 responsible for the collection or payment of the tax imposed on the sale if:

1433 (a) the retailer represents that the personal property is purchased by the retailer for
1434 resale; and

1435 (b) the personal property is not subsequently resold.

1436 (8) If any sale of property or service subject to the tax is made to a person prepaying
1437 sales or use tax in accordance with Title 63M, Chapter 5, Resource Development Act, or to a
1438 contractor or subcontractor of that person, the person to whom such payment or consideration
1439 is payable is not responsible for the collection or payment of the sales or use tax and the person
1440 prepaying the sales or use tax is responsible for the collection or payment of the sales or use tax
1441 if the person prepaying the sales or use tax represents that the amount prepaid as sales or use
1442 tax has not been fully credited against sales or use tax due and payable under the rules
1443 promulgated by the commission.

1444 (9) (a) For purposes of this Subsection (9):

1445 (i) Except as provided in Subsection (9)(a)(ii), "bad debt" is as defined in Section 166,
1446 Internal Revenue Code.

1447 (ii) Notwithstanding Subsection (9)(a)(i), "bad debt" does not include:

1448 (A) an amount included in the purchase price of tangible personal property, a product
1449 transferred electronically, or a service that is:

1450 (I) not a transaction described in Subsection 59-12-103(1); or

1451 (II) exempt under Section 59-12-104;

1452 (B) a financing charge;

1453 (C) interest;

- 1454 (D) a tax imposed under this chapter on the purchase price of tangible personal
1455 property, a product transferred electronically, or a service;
- 1456 (E) an uncollectible amount on tangible personal property or a product transferred
1457 electronically that:
- 1458 (I) is subject to a tax under this chapter; and
1459 (II) remains in the possession of a seller until the full purchase price is paid;
- 1460 (F) an expense incurred in attempting to collect any debt; or
1461 (G) an amount that a seller does not collect on repossessed property.
- 1462 (b) A seller may deduct bad debt from the total amount from which a tax under this
1463 chapter is calculated on a return.
- 1464 (c) A seller may file a refund claim with the commission if:
- 1465 (i) the amount of bad debt for the time period described in Subsection (9)(e) exceeds
1466 the amount of the seller's sales that are subject to a tax under this chapter for that same time
1467 period; and
- 1468 (ii) as provided in Section 59-1-1410.
- 1469 (d) A bad debt deduction under this section may not include interest.
- 1470 (e) A bad debt may be deducted under this Subsection (9) on a return for the time
1471 period during which the bad debt:
- 1472 (i) is written off as uncollectible in the seller's books and records; and
1473 (ii) would be eligible for a bad debt deduction:
- 1474 (A) for federal income tax purposes; and
1475 (B) if the seller were required to file a federal income tax return.
- 1476 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
1477 claims a refund under this Subsection (9), the seller shall report and remit a tax under this
1478 chapter:
- 1479 (i) on the portion of the bad debt the seller recovers; and
1480 (ii) on a return filed for the time period for which the portion of the bad debt is
1481 recovered.
- 1482 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
1483 (9)(f), a seller shall apply amounts received on the bad debt in the following order:
- 1484 (i) in a proportional amount:

- 1485 (A) to the purchase price of the tangible personal property, product transferred
1486 electronically, or service; and
- 1487 (B) to the tax due under this chapter on the tangible personal property, product
1488 transferred electronically, or service; and
- 1489 (ii) to:
- 1490 (A) interest charges;
- 1491 (B) service charges; and
- 1492 (C) other charges.
- 1493 (h) A seller's certified service provider may make a deduction or claim a refund for bad
1494 debt on behalf of the seller:
- 1495 (i) in accordance with this Subsection (9); and
- 1496 (ii) if the certified service provider credits or refunds the entire amount of the bad debt
1497 deduction or refund to the seller.
- 1498 (i) A seller may allocate bad debt among the states that are members of the agreement
1499 if the seller's books and records support that allocation.
- 1500 (10) (a) A seller may not, with intent to evade any tax, fail to timely remit the full
1501 amount of tax required by this chapter.
- 1502 (b) A violation of this section is punishable as provided in Section 59-1-401.
- 1503 (c) Each person who fails to pay any tax to the state or any amount of tax required to be
1504 paid to the state, except amounts determined to be due by the commission under Chapter 1,
1505 Part 14, Assessment, Collections, and Refunds Act, or Section 59-12-111, within the time
1506 required by this chapter, or who fails to file any return as required by this chapter, shall pay, in
1507 addition to the tax, penalties and interest as provided in Section 59-1-401.
- 1508 (d) For purposes of prosecution under this section, each quarterly tax period in which a
1509 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
1510 tax required to be remitted, constitutes a separate offense.
- 1511 Section 26. Section **59-12-108** is amended to read:
- 1512 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
1513 **Certain amounts allocated to local taxing jurisdictions.**
- 1514 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
1515 chapter of \$50,000 or more for the previous calendar year shall:

1516 (i) file a return with the commission:
1517 (A) monthly on or before the last day of the month immediately following the month
1518 for which the seller collects a tax under this chapter; and
1519 (B) for the month for which the seller collects a tax under this chapter; and
1520 (ii) except as provided in Subsection (1)(b), remit with the return required by
1521 Subsection (1)(a)(i) the amount the person is required to remit to the commission for each tax,
1522 fee, or charge described in Subsection (1)(c):
1523 (A) if that seller's tax liability under this chapter for the previous calendar year is less
1524 than \$96,000, by any method permitted by the commission; or
1525 (B) if that seller's tax liability under this chapter for the previous calendar year is
1526 \$96,000 or more, by electronic funds transfer.
1527 (b) A seller shall remit electronically with the return required by Subsection (1)(a)(i)
1528 the amount the seller is required to remit to the commission for each tax, fee, or charge
1529 described in Subsection (1)(c) if that seller:
1530 (i) is required by Section 59-12-107 to file the return electronically; or
1531 (ii) (A) is required to collect and remit a tax under Subsection 59-12-107(1)(a); and
1532 (B) files a simplified electronic return.
1533 (c) Subsections (1)(a) and (b) apply to the following taxes, fees, or charges:
1534 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1535 (ii) a fee under Section 19-6-716;
1536 (iii) a fee under Section 19-6-805;
1537 (iv) a charge under Section 69-2-5;
1538 (v) a charge under Section 69-2-5.5;
1539 (vi) a charge under Section 69-2-5.6; or
1540 (vii) a tax under this chapter.
1541 (d) Notwithstanding Subsection (1)(a)(ii) and in accordance with Title 63G, Chapter 3,
1542 Utah Administrative Rulemaking Act, the commission shall make rules providing for a method
1543 for making same-day payments other than by electronic funds transfer if making payments by
1544 electronic funds transfer fails.
1545 (e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1546 commission shall establish by rule procedures and requirements for determining the amount a

1547 seller is required to remit to the commission under this Subsection (1).

1548 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
1549 seller described in Subsection (4) may retain each month the amount allowed by this
1550 Subsection (2).

1551 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1552 each month 1.31% of any amounts the seller is required to remit to the commission:

1553 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
1554 and a local tax imposed in accordance with the following, for the month for which the seller is
1555 filing a return in accordance with Subsection (1):

1556 (A) Subsection 59-12-103(2)(a);

1557 (B) Subsection 59-12-103(2)(b); and

1558 (C) Subsection 59-12-103(2)(d); and

1559 (ii) for an agreement sales and use tax.

1560 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
1561 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
1562 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
1563 accordance with Subsection 59-12-103(2)(c).

1564 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
1565 equal to the sum of:

1566 (A) 1.31% of any amounts the seller is required to remit to the commission for:

1567 (I) the state tax and the local tax imposed in accordance with Subsection
1568 59-12-103(2)(c);

1569 (II) the month for which the seller is filing a return in accordance with Subsection (1);
1570 and

1571 (III) an agreement sales and use tax; and

1572 (B) 1.31% of the difference between:

1573 (I) the amounts the seller would have been required to remit to the commission:

1574 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
1575 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);

1576 (Bb) for the month for which the seller is filing a return in accordance with Subsection
1577 (1); and

1578 (Cc) for an agreement sales and use tax; and
1579 (II) the amounts the seller is required to remit to the commission for:
1580 (Aa) the state tax and the local tax imposed in accordance with Subsection
1581 59-12-103(2)(c);
1582 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
1583 and
1584 (Cc) an agreement sales and use tax.
1585 (d) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
1586 each month 1% of any amounts the seller is required to remit to the commission:
1587 (i) for the month for which the seller is filing a return in accordance with Subsection
1588 (1); and
1589 (ii) under:
1590 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
1591 (B) Title 17, Chapter 6, County Energy Sales and Use Tax Act;
1592 [~~B~~] (C) Subsection 59-12-603(1)(a)(i)(A); or
1593 [~~C~~] (D) Subsection 59-12-603(1)(a)(i)(B).
1594 (3) A state government entity that is required to remit taxes monthly in accordance
1595 with Subsection (1) may not retain any amount under Subsection (2).
1596 (4) A seller that has a tax liability under this chapter for the previous calendar year of
1597 less than \$50,000 may:
1598 (a) voluntarily meet the requirements of Subsection (1); and
1599 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the
1600 amounts allowed by Subsection (2).
1601 (5) Penalties for late payment shall be as provided in Section 59-1-401.
1602 (6) (a) Except as provided in Subsection (6)(c), for any amounts required to be remitted
1603 to the commission under this part, the commission shall each month calculate an amount equal
1604 to the difference between:
1605 (i) the total amount retained for that month by all sellers had the percentages listed
1606 under Subsections (2)(b) and (2)(c)(ii) been 1.5%; and
1607 (ii) the total amount retained for that month by all sellers at the percentages listed
1608 under Subsections (2)(b) and (2)(c)(ii).

1609 (b) The commission shall each month allocate the amount calculated under Subsection
 1610 (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use
 1611 tax that the commission distributes to each county, city, and town for that month compared to
 1612 the total agreement sales and use tax that the commission distributes for that month to all
 1613 counties, cities, and towns.

1614 (c) The amount the commission calculates under Subsection (6)(a) may not include an
 1615 amount collected from a tax that:

- 1616 (i) the state imposes within a county, city, or town, including the unincorporated area
 1617 of a county; and
 1618 (ii) is not imposed within the entire state.

1619 Section 27. Section **59-12-128** is amended to read:

1620 **59-12-128. Amnesty.**

1621 (1) As used in this section, "amnesty" means that a seller is not required to pay the
 1622 following amounts that the seller would otherwise be required to pay:

1623 (a) a tax, fee, or charge under:

- 1624 (i) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
 1625 (ii) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act;
 1626 (iii) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act;
 1627 (iv) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act;
 1628 [~~(iii)~~] (v) Section 19-6-714;
 1629 [~~(iv)~~] (vi) Section 19-6-805;
 1630 [~~(v)~~] (vii) Section 69-2-5;
 1631 [~~(vi)~~] (viii) Section 69-2-5.5;
 1632 [~~(vii)~~] (ix) Section 69-2-5.6; or
 1633 [~~(viii)~~] (x) this chapter;

1634 (b) a penalty on a tax, fee, or charge described in Subsection (1)(a); or

1635 (c) interest on a tax, fee, or charge described in Subsection (1)(a).

1636 (2) The commission shall grant a seller amnesty under this section if the seller:

1637 (a) was not licensed under Section 59-12-106 at any time during the 12-month period
 1638 prior to the effective date of the state's participation in the agreement;

1639 (b) obtains a license under Section 59-12-106 within a 12-month period after the

1640 effective date of the state's participation in the agreement; and
1641 (c) is registered under the agreement.
1642 (3) A seller may not receive amnesty under this section for a tax, fee, or charge:
1643 (a) the seller collects;
1644 (b) the seller remits to the commission;
1645 (c) that the seller is required to remit to the commission on the seller's purchase; or
1646 (d) arising from a transaction that occurs within a time period that is under audit by the
1647 commission if:
1648 (i) the seller receives notice of the commencement of the audit prior to obtaining a
1649 license under Section 59-12-106; and
1650 (ii) (A) the audit described in Subsection (3)(d)(i) is not complete; or
1651 (B) the seller has not exhausted all administrative and judicial remedies in connection
1652 with the audit described in Subsection (3)(d)(i).
1653 (4) (a) Except as provided in Subsection (4)(b), amnesty the commission grants to a
1654 seller under this section:
1655 (i) applies to the time period during which the seller is not licensed under Section
1656 59-12-106; and
1657 (ii) remains in effect if, for a period of three years, the seller:
1658 (A) remains registered under the agreement;
1659 (B) collects a tax, fee, or charge on a transaction subject to a tax, fee, or charge
1660 described in Subsection (1)(a); and
1661 (C) remits to the commission the taxes, fees, and charges the seller collects in
1662 accordance with Subsection (4)(a)(ii)(B).
1663 (b) The commission may not grant a seller amnesty under this section if, with respect
1664 to a tax, fee, or charge for which the seller would otherwise be granted amnesty under this
1665 section, the seller commits:
1666 (i) fraud; or
1667 (ii) an intentional misrepresentation of a material fact.
1668 (5) (a) If a seller does not meet a requirement of Subsection (4)(a)(ii), the commission
1669 shall require the seller to pay the amounts described in Subsection (1) that the seller would
1670 have otherwise been required to pay.

1671 (b) Notwithstanding Section 59-1-1410, for purposes of requiring a seller to pay an
1672 amount in accordance with Subsection (5)(a), the time period for the commission to make an
1673 assessment under Section 59-1-1410 is extended for a time period beginning on the date the
1674 seller does not meet a requirement of Subsection (4)(a)(ii) and ends three years after that date.

1675 Section 28. Section **72-7-102** is amended to read:

1676 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
1677 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
1678 **for violation.**

1679 (1) As used in this section, "management costs" means the reasonable, direct, and
1680 actual costs a highway authority incurs in exercising authority over the highways under its
1681 jurisdiction.

1682 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

1683 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
1684 street; or

1685 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
1686 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
1687 character within the right-of-way.

1688 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
1689 excavating, installation of utilities and other facilities or access under rules made by the
1690 highway authority and in compliance with federal, state, and local law as applicable.

1691 (b) (i) The rules may require a permit for any excavation or installation and may
1692 require a surety bond or other security.

1693 (ii) The application for a permit for excavation or installation on a state highway shall
1694 be accompanied by a fee established under Subsection (4)(f).

1695 (iii) The permit may be revoked and the surety bond or other security may be forfeited
1696 for cause.

1697 (4) (a) Except as provided in Section 72-7-108 with respect to the department
1698 concerning the interstate highway system, a highway authority may require compensation from
1699 a utility service provider for access to the right-of-way of a highway only as provided in this
1700 section.

1701 (b) A highway authority may recover from a utility service provider, only those

1702 management costs caused by the utility service provider's activities in the right-of-way of a
1703 highway under the jurisdiction of the highway authority.

1704 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
1705 competitively neutral basis.

1706 (ii) If a highway authority's management costs cannot be attributed to only one entity,
1707 the management costs shall be allocated among all privately owned and government agencies
1708 using the highway right-of-way for utility service purposes, including the highway authority
1709 itself. The allocation shall reflect proportionately the management costs incurred by the
1710 highway authority as a result of the various utility uses of the highway.

1711 (d) A highway authority may not use the compensation authority granted under this
1712 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
1713 its management costs.

1714 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
1715 a highway authority is entitled to recover those management costs.

1716 (ii) If the highway authority that assesses the management costs or franchise fees is a
1717 political subdivision of the state and the utility service provider serves customers within the
1718 boundaries of that highway authority, the management costs may be recovered from those
1719 customers.

1720 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1721 department shall adopt a schedule of fees to be assessed for management costs incurred in
1722 connection with issuing and administering a permit on a state highway under this section.

1723 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
1724 fee imposed:

1725 (i) by a municipality on a telecommunications provider, as defined in Section
1726 10-1-402, is subject to Section 10-1-406[-]; or

1727 (ii) by a county on a telecommunications provider, as defined in Section 17-50-702, is
1728 subject to Section 17-50-706.

1729 (5) Permit fees collected by the department under this section shall be deposited with
1730 the state treasurer and credited to the Transportation Fund.

1731 (6) Nothing in this section shall affect the authority of:

1732 (a) a municipality under:

1733 [~~(a)~~] (i) Section 10-1-203;

1734 [~~(b)~~] (ii) Section 11-26-1;

1735 [~~(c)~~] (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

1736 [~~(d)~~] (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax

1737 Act[-]; or

1738 (b) a county under:

1739 (i) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or

1740 (ii) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act.

1741 (7) A person who violates the provisions of Subsection (2) is guilty of a class B

1742 misdemeanor.

1743 Section 29. Section **72-7-108** is amended to read:

1744 **72-7-108. Longitudinal telecommunication access in the interstate highway**

1745 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

1746 (1) As used in this section:

1747 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a

1748 highway on the interstate system that extends generally parallel to the right-of-way for a total of

1749 30 or more linear meters.

1750 (b) "Statewide telecommunications purposes" means the further development of the

1751 statewide network that meets the telecommunications needs of state agencies and enhances the

1752 learning purposes of higher and public education.

1753 (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,

1754 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting

1755 equipment, receiving equipment, power equipment, or other equipment, system, and device

1756 used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical

1757 signal for communication purposes.

1758 (2) (a) Except as provided in Subsection (4), the department may allow a

1759 telecommunication facility provider longitudinal access to the right-of-way of a highway on the

1760 interstate system for the installation, operation, and maintenance of a telecommunication

1761 facility.

1762 (b) The department shall enter into an agreement with a telecommunication facility

1763 provider and issue a permit before granting it any longitudinal access under this section.

- 1764 (i) Except as specifically provided by the agreement, a property interest in a
1765 right-of-way may not be granted under the provisions of this section.
- 1766 (ii) An agreement entered into by the department under this section shall:
- 1767 (A) specify the terms and conditions for the renegotiation of the agreement;
- 1768 (B) specify maintenance responsibilities for each telecommunication facility;
- 1769 (C) be nonexclusive; and
- 1770 (D) be limited to a maximum term of 30 years.
- 1771 (3) (a) The department shall require compensation from a telecommunication facility
1772 provider under this section for longitudinal access to the right-of-way of a highway on the
1773 interstate system.
- 1774 (b) The compensation charged shall be:
- 1775 (i) fair and reasonable;
- 1776 (ii) competitively neutral;
- 1777 (iii) nondiscriminatory;
- 1778 (iv) open to public inspection;
- 1779 (v) established to promote access by multiple telecommunication facility providers;
- 1780 (vi) established for zones of the state, with zones determined based upon factors that
1781 include population density, distance, numbers of telecommunication subscribers, and the
1782 impact upon private right-of-way users;
- 1783 (vii) established to encourage the deployment of digital infrastructure within the state;
- 1784 (viii) set after the department conducts a market analysis to determine the fair and
1785 reasonable values of the right-of-way based upon adjacent property values;
- 1786 (ix) a lump sum payment or annual installment, at the option of the
1787 telecommunications facility provider; and
- 1788 (x) set in accordance with Subsection (3)(f).
- 1789 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination
1790 of cash and in-kind compensation.
- 1791 (ii) In-kind compensation requires the agreement of both the telecommunication
1792 facility provider and the department.
- 1793 (iii) The department shall, in consultation with the Telecommunications Advisory
1794 Council created in Section 72-7-109, determine the present value of any in-kind compensation

1795 based upon the incremental cost to the telecommunication facility provider.

1796 (iv) The value of in-kind compensation or a combination of cash and in-kind
1797 compensation shall be equal to or greater than the amount of cash compensation that would be
1798 charged if the compensation is cash only.

1799 (d) (i) The department shall provide for the proportionate sharing of costs among the
1800 department and telecommunications providers for joint trenching or trench sharing based on
1801 the amount of conduit innerduct space that is authorized in the agreement for the trench.

1802 (ii) If two or more telecommunications facility providers are required to share a single
1803 trench, each telecommunications facility provider in the trench shall share the cost and benefits
1804 of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively
1805 neutral, and nondiscriminatory basis.

1806 (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every
1807 five years and any adjustments warranted shall apply only to agreements entered after the date
1808 of the new market analysis.

1809 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1810 department shall establish a schedule of rates of compensation for any longitudinal access
1811 granted under this section.

1812 (4) The department may not grant any longitudinal access under this section that results
1813 in a significant compromise of the safe, efficient, and convenient use of the interstate system
1814 for the traveling public.

1815 (5) The department may not pay any cost of relocation of a telecommunication facility
1816 granted longitudinal access to the right-of-way of a highway on the interstate system under this
1817 section.

1818 (6) (a) Monetary compensation collected by the department in accordance with this
1819 section shall be deposited with the state treasurer and credited to the Transportation Fund.

1820 (b) Any telecommunications capacity acquired as in-kind compensation shall be used:

1821 (i) exclusively for statewide telecommunications purposes and may not be sold or
1822 leased in competition with telecommunication or Internet service providers; and

1823 (ii) as determined by the department after consultation with the Telecommunications
1824 Advisory Council created in Section 72-7-109.

1825 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

1826 department shall make rules:

1827 (a) governing the installation, operation, and maintenance of a telecommunication
1828 facility granted longitudinal access under this section;

1829 (b) specifying the procedures for establishing an agreement for longitudinal access for
1830 a telecommunication facility provider;

1831 (c) providing for the relocation or removal of a telecommunication facility for:

1832 (i) needed changes to a highway on the interstate system;

1833 (ii) expiration of an agreement; or

1834 (iii) a breach of an agreement; and

1835 (d) providing an opportunity for all interested providers to apply for access within open
1836 right-of-way segments.

1837 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this
1838 section shall be construed to allow a highway authority to require compensation from a
1839 telecommunication facility provider for longitudinal access to the right-of-way of a highway
1840 under the highway authority's jurisdiction.

1841 (b) Nothing in this section shall affect the authority of a municipality under:

1842 (i) Section 10-1-203;

1843 (ii) Section 11-26-1;

1844 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

1845 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

1846 (c) Nothing in this section shall affect the authority of a county under:

1847 (i) Title 17, Chapter 50, Part 6, County Energy Sales and Use Tax Act; or

1848 (ii) Title 17, Chapter 50, Part 7, County Telecommunications License Tax Act.

1849 (9) Compensation paid to the department under Subsection (3) may not be used by any
1850 person as evidence of the market or other value of the access for any other purpose, including
1851 condemnation proceedings, other litigation, or the application of rates of taxation or the
1852 establishment of franchise fees relating to longitudinal access rights.

Legislative Review Note
as of 2-8-10 5:54 PM

Office of Legislative Research and General Counsel

H.B. 383 - County Tax Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

If a county of the first class chooses to enact the fee provided in the bill in lieu of current fees there is the potential for a local revenue loss of approximately \$2,000,000. There will be a corresponding savings to businesses and individuals.
